

## LYNCHBURG CITY COUNCIL REPORT

Meeting Date: January 15, 2002 Council Report #: 9

Contact: Rachel Flynn – 847-1508 x 253 Report Writer: Bill McDonald 847-1508 x 257

Subject: Rezoning: B-3 to B-5(C) at 8209/8213 Timberlake Road  
Petitioners: George A. Hartless

Purpose of Action:  
To allow the sales of used cars with an office.

Requested Action:  
Adoption of an ordinance to approve the rezoning.

Prior Action:  
December 12: Planning Commission recommended denial of the rezoning  
December 12: Planning Division recommended denial of rezoning

Attachments: Planning Commission report, Planning Commission minutes from December 12, 2001 meeting, Vicinity/Zoning Map, Vicinity Land Use Map, Site Plan

Resolution/Ordinance:  
Attached

007L

Other Information: None

AN ORDINANCE CHANGING A CERTAIN AREA FROM B-3, COMMUNITY BUSINESS DISTRICT TO B-5 (CONDITIONAL), GENERAL BUSINESS DISTRICT.

BE IT ORDAINED BY THE COUNCIL OF THE CITY OF LYNCHBURG, that in order to promote the public necessity, convenience, general welfare, and good zoning practice, that 35.1 of the Code of the City of Lynchburg, 1981, as amended, be, and the same is hereby further amended by adding thereto Section 35.1-76.\_\_\_\_, which section shall read as follows:

35.1-76.\_\_\_\_. Change of a certain area from B-3, Community Business District to B-5 (Conditional), General Business District.

The area embraced within the following boundaries . . .

8209 Timberlake Road  
**Lot D – Tax Map #253-10-002**

Beginning at a point on the western side of the Timberlake Road, 265 feet from the intersection of Wood Road with said Timberlake Road and running along the dividing line between Lots “C” and “D” N 67° 45’ W 175 feet to a point; thence N 31° 30’ E 100 feet to a point on the dividing line between Lots “D” and “E”; thence S 22° 30’ E 175 feet; and thence southerly along the line of Timberlake Road S 58° 30’ W 100 feet to the point of beginning.

8213 Timberlake Road  
**Lot C – Tax Map #253-10-003**

Beginning at a point on the western side of Timberlake Road, 363 feet from the intersection of Wood Road with said Timberlake Road and running along the intersection of Wood Road with said Timberlake Road and running along the dividing line between Lots “B” and “C” N 67° 58’ W 246.87 feet to a point; thence N 26° 52’ E 98 feet to a point on the dividing line between Lots “C” and “D”; thence S 22° 15’ E 254 feet; and thence southerly along the line of Timberlake Road S 58° 30’ W 98 feet to the point of beginning.

. . . is hereby changed from B-3, Community Business District to B-5 (Conditional), General Business District, subject to the conditions setout hereinbelow which were voluntarily proffered in writing by the owner, namely: George A. Hartless, to wit:

1. Those usages which will be prohibited: bottling plants, commercial amusements, dairies, drive-in theaters.
2. The site will be developed and used in substantial compliance with the attached site plan (titled Proposed Office/Auto Sales by Heppner Engineering & Design) dated 9/17/01 and revised 10/30/01.

And the Director of Community Planning and Development shall forthwith cause the “Official Zoning Map of Lynchburg, Virginia” referred to in Section 35.1-4 of this Chapter to be amended in accordance therewith.

Adopted:

Certified:

\_\_\_\_\_  
Clerk of Council

007L

# The Department of Community Planning & Development

City Hall, Lynchburg, VA 24504

434-847-1508

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**To:** Planning Commission  
**From:** Planning Division  
**Date:** December 12, 2001  
**Re:** **REZONING: B-3 to B-5(C) at 8209/8213 TIMBERLAKE ROAD**

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## I. PETITIONER

George A. Hartless, 4207 Wards Road, Lynchburg, VA 24502.  
Representative: **Petitioner**

## II. LOCATION

The subject property is a tract of about 1.2 acres located at 8209/8213 Timberlake Road.  
**Property Owner:** George A. Hartless, 4207 Wards Road, Lynchburg, Virginia 24502.

## III. PURPOSE

The purpose of this petition is to rezone the subject property from B-3, Community Business District, to B-5 (Conditional), General Business District, in order to allow the operation of a used car lot.

## IV. SUMMARY

- Petition does agree with the *General Plan*, which recommends a Business Commercial use.
- Petition will increase the intensity of commercial zoning of an existing commercially zoned parcel.
- Petition is less compatible with the surrounding area than the existing zoning and land use.
- **The Planning Division recommends denial of the rezoning petition.**

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## V. FINDINGS OF FACT

1. **General Plan.** The Lynchburg *General Plan* recommends a Business Commercial use for the subject property. The *General Plan* has consistently recommended a commercial land use for the subject property. The *General Plan* discourages scattering commercial activities throughout the City. Scattering often results in increased inconvenience for customers and increases the dangers of blighting effects on residential areas. Objective 4 recommends “[a] pattern of commercial uses and design of commercial areas which cause a minimum of nuisance to living areas and of interference with traffic on major thoroughfares.” The subject petition proposes an increased intensity in zoning and land use for an existing commercially zoned property. The Timberlake Road corridor is the main gateway into the City from the west. Recently, the City Council has made a conscious effort to encourage the most appropriate land uses along these entrances into the City. The subject petition requests the most intensive zoning classification for this property that is literally the first parcel that is located within the City Limits on the west side of Timberlake Road. The proposal will not maintain the current practice of encouraging more restrictive land uses along this corridor.

**Zoning.** The site is proposed to be used for the sale of automobiles. The property is presently zoned B-3, Community Business District. The petitioner is requesting a rezoning to a B-5 zoning classification, the

most intensive commercial zoning classification. The adjacent parcel to the south is located in Campbell County, the adjoining property along Timberlake Road is zoned B-3, and the property to the rear is zoned R-3.

There are two B-5 zones in the general area of the subject property. One is the Lowe's property on the opposite side of Timberlake Road, which required a B-5 zoning to allow the outside lumber storage. The other is the Putt-Putt property, which required the B-5 zoning for the commercial recreation facility. Both of these properties are located on extremely deep parcels with the actual uses being well off of the Timberlake Road frontage. The predominant zoning and uses in the area are B-3.

The subject property is located in the Commercial Corridor Overlay District. This zoning was created to control the flow of traffic access among the adjoining properties in the district. The site plan fails to indicate any type of shared access to either of the adjacent properties. The proposed use as a used car lot makes such an access more difficult to function well. The proposed zoning is not appropriate to the site.

2. **Proffers.** The petitioner voluntarily submitted the following proffers with the rezoning application:
  - “Those usages which will be prohibited: bottling plants, commercial amusements, dairies, drive-in theaters.”
  - “The site will be developed and used in substantial compliance with the attached site plan (titled Proposed Office/Auto Sales by Heppner Engineering & Design) dated 10/30/01.”

The proffers provide essentially no restriction from the number of or intensity of uses that are allowed by the B-5 zoning classification. The site restrictions make many uses unlikely.

3. **Board of Zoning Appeals (BZA).** No action by the BZA is necessary.
4. **Surrounding Area.** There have been no recent rezoning petitions or CUP petitions in the vicinity of the subject property.
5. **Site Description.** The site is approximately 1.2 acres, has been used for residential use, currently retains a residential structure, has a ground cover of grass, and rises about 20 feet as it extends back about 247 feet from Timberlake Road. The site is abutted by commercial use to the north (Amoco Food Shop with gas pumps), to the east by Timberlake Road (and Hill City Chop House beyond), to the south by property in Campbell County (Chevron Food Mart with gas pumps), and to the west by residences. The site plan indicates a small paved parking area with a gravel lot for the inventory. The remainder (the rear) of the property is indicated as being undeveloped, with an evergreen buffer adjacent to the car lot as well as at the extreme rear of the property adjacent to the residences.
6. **Proposed Use of Property.** The purpose of the rezoning is to allow the operation of a used car lot with an office in an existing building. The building has an area of about 1,100 square feet.
7. **Traffic & Parking.** The City Traffic Engineer did not submit any comments of concern regarding the subject petition. The proposed use is not expected to generate a significant amount of traffic.

The site plan proposes four parking spaces, which should be an adequate amount for the proposed use of the property for a used car lot.

8. **Storm Water Management.** The Environmental Specialist of the Robert E. Lee Soil & Water Conservation District notes that a storm water management plan will be required only if the disturbed area exceeds 1,000 square feet. The petition does propose any new disturbed areas.
9. **Visual Impact.** The current submittal proposes to use the existing residential structure for an office for the operation of the car lot. There is no proposed exterior modification of the structure. The proposed landscaping should help to mitigate some of the impact from the proposed use, but is not adequate for this property. The fact that the proposed use is among the most intensive and the appearance of such a use is not considered to be appropriate for the corridor in that it is contrary to the development trend in the area. The proposed rezoning is not compatible with the surrounding land uses and zoning.
10. **Technical Review Committee.** The Technical Review Committee (TRC) reviewed the preliminary site plan for the rezoning on November 20 and noted the need for a few revisions, most of which were minor in nature and addressed by the petitioner. The following are comments concern regarding the proposed rezoning:
  - A. "The Planning Division is concerned about the intensity of the proposed rezoning and strongly discourages the petition."
  - B. The site plan indicates lot lines that do not agree with the City Assessor's Valuation map boundaries. Since the petition is requesting a rezoning, an accurate metes and bounds description of the property certified by a licensed surveyor must be submitted to clarify the correct boundaries. The petitioner cannot rezone property belonging to someone else."
  - C. "Landscaping equal to 15% of the parking area is required and should be located between the detention trench and the parking area rather than along the property line as shown on the submitted site plan."
  - D. "Street trees must be located on the property line to provide maximum sight distance when exiting the property."
  - E. "It is suggested that landscape beds along the front of the existing building be planted with low maintenance shrubs."

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## V. PLANNING DIVISION RECOMMENDATION

Based on the preceding Findings of Fact, the Planning Division recommends to the City Council denial of the petition of George A. Hartless to rezone about 1.2 acres at 8209/8213 Timberlake Road from B-3, Community Business District, to allow the operation of a used car lot and office.

This matter is respectfully offered for your consideration.

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William K. McDonald, AICP  
Acting City Planner

pc: Mr. L. Kimball Payne, III, City Manager  
Mr. Walter C. Erwin, City Attorney  
Ms. Rachel O. Flynn, Director of Community Planning & Development  
Mr. Bruce A. McNabb, Director of Public Works  
Mr. John W. Jennings, Fire Marshal  
Ms. Judith C. Wiegand, Strategic Planner  
Mr. J. Lee Newland, Director of Engineering  
Mr. Gerry L. Harter, Traffic Engineer  
Mr. Robert Drane, Acting Building Commissioner  
Mr. Arthur L. Tolley, Zoning Official  
Mr. Robert S. Fowler, Zoning Official  
Mr. George A. Hartless, Petitioner/Representative

## VI. ATTACHMENTS

### **1. Vicinity Zoning Pattern**

(see attached map)

### **2. Vicinity Proposed Land Use**

(see attached map)

### **3. Site Plan**

(see attached site plan)

Petition of George A. Hartless to rezone approximately 1.2 acres at 8209/8213 Timberlake Road from B-3, Community Business District to B-5 (Conditional), General Business District, to allow the operation of a used car lot.

Mr. Robert Hartless, 217 Majestic Road, addressed the Commission on behalf of his father, George A. Hartless. He explained that his father had owned the Brookville Chevron corner for approximately 30 years. He said recently his father purchased 8209 Timberlake Road, which adjoins property that Mr. Hartless currently owns at 8213 Timberlake Road. He said the traffic count at that intersection was approximately 34,000 cars per day and was a prime location for a business such as a used car sales. He said the property would be leased and the lessor would be required to maintain the property according to standards outlined in the contract. Mr. Hartless said the property was currently zoned B-3. He added that several businesses around the site were also zoned B-3, but were being operated as B-5 businesses. He told the Commission that it was not out of line to request that this property be rezoned to B-5.

Mrs. Piney Thompson, 29 Mountain View Drive, spoke against the petition. Mrs. Thompson said that Mr. Hartless had already removed all vegetation on the site. She said of the property Mr. Hartless owned in that area, none of it has ever been maintained properly. Mrs. Thompson added that she did not want to see a car lot in her back yard.

Mr. McDonald read for the record a phone message from Mrs. Kimsey E. (Ineta C.) Bradley, 100 Mountain View Drive, asking that a tree buffer or a fence be built at the property line to hide the car lot from her back yard.

Mr. McDonald explained to the Commission that there was a question about ownership and property lines for the subject property. He said the subject site plan reflected a 1943 subdivision plat which did not coincide with the City's current valuation map. He said those two situations needed to be resolved before the petition could be submitted to the City Attorney's office for City Council consideration of rezoning any property.

Ms. Caroline Heppner, Heppner Engineering & Design, P.C., and engineer for this project said she had been involved in similar situations in the past, and had found that the County records contained the correct information. She said this would be resolved before receiving any permits for the project.

Commissioner Wilkins asked about the access road.

Ms. Heppner said she was not aware that an access road between the properties was required until she received a copy of the Planning Division's report. She said the requirement had not been included in the TRC comments. She said since this site was in the Commercial Corridor Overlay District she would work with the Amoco Food Shop and the Chevron Food Mart to provide access among the parcels.

Commissioner Flint asked what uses the Amoco and Chevron stores would be B-5 uses.

Ms. Heppner said some of the provisions of B-5 zoning were that the businesses had gas pumps, were a service station, or sold auto parts, and both of these businesses fall into that category.

Mr. Hartless said only the front 90' of the lot would be utilized. He said there would be an additional 100' between the back of the car sales and the lot line, and added that there would be two vegetative buffers between the proposed car sales and the homeowners.

Commissioner Wilkins asked Mr. Hartless if he understood Mrs. Thompson's concern that the entire lot would be used, not just the front 90'.



Mr. Hartless said he did understand Mrs. Thompson's concern and did not want to bring down the value of the property. He said they had proffered to eliminate some uses for the property. He added that there were also many by-right uses in a B-5 area that would be too large for the lot and, therefore, could not be built at this location.

Ms. Heppner added that one of the proffers was that the site be developed with substantial compliance with the site plan and would be a condition of the rezoning. She said if a new owner took over, that proffer would remain with the land.

Commissioner Echols asked if the access on Timberlake Road would cause any congestion. He asked how many cars per day would come in and out of the lot.

Mr. Hartless said in the staff report, the Traffic Engineer did not anticipate any increase in use of the road as a result of the proposed business. He said there might be approximately 20 cars maximum per day.

Chair Dahlgren asked about turn over of cars. He said there seemed to be some used car sales that never sell a vehicle and tend to continually push the junk automobiles to the back of the lot until they are disposed of. He asked Mr. Hartless approximately how many cars might be on the lot at one time.

Mr. Hartless said in his own car sales business he might have only six trade-ins in a one year time period. He said he would either trade older vehicles to other dealers or take them to car auctions. He added that he maintained a higher level of cars on his lot, with the oldest car being a 1996. He said, hopefully, lower end car sales would be discouraged by charging higher lot rent.

Commissioner Moore asked how the Commission could be sure that this car sales does not end up being over run with junk cars like other car sales in the City. He said Timberlake Road was a major corridor into the City and appearance was the major issue. He asked if calculations had been done to determine how many cars could be parked on that lot. Commissioner Moore also asked Mr. Hartless about safety in bringing cars on to the lot? He suggested that instead of gravel, the lot be paved to improve the appearance. He said he was not convinced that the lot would be top quality as it is currently planned.

Mr. Hartless said the display area would only be 90 feet deep and 120 feet wide. He noted that if his father wanted to increase the lot size he would have to come back to the Planning Commission and City Council. He explained that when he purchased cars he usually had individual drivers bring them to his car lot, but occasionally had cars transported on a 3-car hauler. He said there was enough room on the lot for a hauler to get in and out of the property with no problem. Mr. Hartless referred to the well-maintained car sales lot next to Wendy's on Timberlake Road, and added that he wanted to model the proposed lot like that one.

Chair Dahlgren said part of the job of the Planning Commission was to protect the neighbors and the appearance of the City but still bring new businesses into the area. However, he said, he did not think a car lot would be a positive addition to that area of the City, and added that he needed a more concrete plan than what Mr. Hartless had presented to the Planning Commission.

Commissioner Echols asked Mr. McDonald why the Planning Division recommended denial of the petition.

Mr. McDonald said the recommendation was based on the intensity of the proposed site. He said the petitioner was asking for a B-5 use on land zoned for a B-3 use in an area composed primarily of B-3 zoning and uses.

Commissioner Flint asked Mr. McDonald if it was practical to join the adjacent properties with an access road.

Mr. McDonald said it was required due to the Commercial Corridor Overlay District.

Mr. Troy Hogan, adjoining neighbor, told the Commission that he did not know the property was going to be leased. He added that all other property leased by Mr. Hartless in that same area was never maintained. He said that Mr. Hartless did not force the leasee to follow the terms of the lease concerning property maintenance.

Commissioner Worthington said he was not in favor of the project. He said he too thought the petitioner was going to utilize the property. He said the City was trying to improve the area through the Comprehensive Plan and said this type of business did not fit into the area. Commissioner Worthington said there are neighbors against the petition, and the staff did not recommend approval, so he could not support the request.

Commissioner Flint said with the double buffer of evergreen trees and only using the front 90 feet of the property the neighbors would be protected; however, he said, the appearance on Timberlake Road should be kept nice and was not sure that this petition met the standards that the City would like to have in that area.

Commissioner Wilkins commented that main thoroughfares are where business should be located, and thinks the Commission should suggest ways to help this type of business look nicer. She said the City needed businesses in town and hoped that the Commission could move forward with this petition. Commissioner Wilkins noted her concern that the City was shutting down by not allowing these businesses on major roads.

Chair Dahlgren said businesses like these are a necessity to the City, but due to this location being so visible and the lack of information about the plan, he said he could not support the petition.

Commissioner Wilkins said there was always a risk involved in not knowing if a property would be used by the petitioner or leased, and added that if the property was leased, it did not necessarily have to be bad. She said the number of cars might be unknown, but they did know the size of the lot. She urged the Commission to move forward with the rezoning. Commissioner Wilkins said they should figure out how to make the petition work, not why it does not work.

Commissioner Echols said there were too many entrances and exits on Timberlake Road. He said the typical used car sales got the customer's attention by flying flags and putting signs on many of the cars. He added that he did not know if he could support the petition.

Commissioner Flint said that he liked the fact that there would be 100 feet at the back of the property separating the car sales from the neighbors. He added that another business could be built on the site by right which could be a more intensive use, and utilize the entire lot. He said if that happened, the Commission would have no control over what the business might look like, but with this petition, they can somewhat control the appearance. Even though it is a tough decision, he explained, he felt he could support the petition.

Chair Dahlgren said it was difficult for him to support the petition for the reasons he stated earlier. He said if there was a desire to turn this site into a used car sales, the petitioner should consider coming back before the Planning Commission with more concrete plans with conditions.

After further discussion, Commissioner Dahlgren made the following motion, which was seconded by Commissioner Flint and passed by the following vote:

"That the Planning Commission recommends to the City Council approval of the petition of George A. Hartless to rezone about 1.2 acres at 8209/8213 Timberlake Road from B-3, Community Business District, to allow the operation of a used car lot and office with the following proffers:

- Those usages which will be prohibited: bottling plants, commercial amusements, dairies, drive-in theaters.
- The site shall be developed and used in substantial compliance with the attached site plan (titled Proposed Office/Auto Sales by Heppner Engineering & Design) dated 10/30/01."

AYES:	Flint, Wilkins	2
NOES:	Dahlgren, Echols, Moore, Worthington	4
ABSTENTIONS:		0

GEORGE A HARTLESS  
8209/8213 TIMBERLAKE ROAD  
REZONING REQUEST B-3 to B-5C  
TAX MAP #'S 253-10-002/3  
MAP PREPARED BY  
THE DEPARTMENT OF COMMUNITY PLANNING & DEVELOPMENT



Subject Property  
200 ft. Radius

